

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

18885

**FILE:** B-213773

**DATE:** July 23, 1984

**MATTER OF:** Starflight Inc.

**DIGEST:**

1. Air Carrier is not entitled to charges for emergency air service when notations on the government bill of lading supported by the evidence of record indicate that the shipping agency requested deferred air service.
2. Where the Army requested on the government bill of lading (GBL) deferred air service but also indicated on the GBL that the shipment was on pallets, on which deferred air service was not applicable by the terms of the governing rate tender, the carrier was obligated to notify the shipper of the conflict and, on failure to do so, is obliged to honor the lower deferred air service charges.

Starflight, Inc. (Starflight), requests review of the audit action by the General Services Administration (GSA) on a shipment of one pallet of explosives, weighing 155 pounds, from the Army Depot, Pueblo, Colorado, to Fort Benning, Georgia, under government bill of lading (GBL) No. S-4048403, dated May 3, 1982.

We sustain the original audit action.

For the service performed, Starflight originally claimed, and was paid prior to audit, pursuant to § 322 of the Transportation Act of 1940, as amended, 31 U.S.C. 3726 (1982), \$6,800.83 for emergency air service in accordance with Starflight tender No. 16. On audit of the charges, GSA computed the applicable charges to be \$784.73 on the basis of Starflight's deferred air service tender No. 11.

Starflight requested review by the Comptroller General of this action alleging, first, that the deferred service charges are not applicable to palletized shipments, and, second, that the charges originally billed for emergency air service are applicable because a Mrs. Petrello, apparently an employee in the origin transportation office, orally requested delivery within 24 hours.

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GSA alleges, first, that Starflight has not refunded any part of the asserted overcharges nor has any deduction action been initiated by GSA for recovery of the asserted overcharges, and our review procedures require a final action by GSA prior to a request for review. Nevertheless, GSA has addressed the substantive issues.

Generally, an overcharge claim by GSA is not reviewable by our Office under section 322 of the Transportation Act of 1940, 31 U.S.C. § 3726(d) (1982), as implemented by our regulations, 4 C.F.R. § 53 (1984), until the disputed amount has been recovered by the government. However, we will review the matter as a request by GSA for an advance decision when the case has been fully developed and the parties are awaiting a decision. Starflight, Inc., B-213755, May 2, 1984, 84-1 C.P.D. ¶ 499.

GSA states that it now agrees with Starflight that the deferred service charges are not applicable because Starflight tender No. 11 providing for deferred service also provides in Note 7b that the tender does not apply to palletized shipments, and this shipment was tendered on a pallet. GSA has issued an amended Notice of Overcharge for \$3,713.80 on the basis of charges of \$3,087.03 provided by Starflight tender No. 14 for regular air service. GSA contends that there is no evidence in the file that Pueblo requested 24-hour service, straight through pickup and delivery and, therefore, Starflight tender 16 for emergency air service is not applicable.

Starflight alleges that Mrs. Petrello orally requested that the shipment be picked up on May 3, 1982, and flown directly to Fort Benning. Starflight alleges that this was done and that the shipment was delivered on May 4, 1982.

The GBL does show that delivery was receipted at destination on May 4, 1982, as alleged by Starflight. The GBL, which constitutes the contract of carriage, also bears the notation: "DEFERRED SERVICE REQUESTED." Also noted on the GBL is an estimated freight charge of \$560, which approximates the applicable charge for deferred air service. In a statement in the record, the transportation officer attests that release was requested from the Military Traffic Management Command Western Area for Transportation Priority 3 shipment and "was received for 'Deferred Air Service' and estimated charges of \$560 shown on the GBL."

Starflight tender No. 11, offering deferred service, provides in Note 4 that: "These rates apply only when Bill of Lading is annotated: 'Deferred Service Requested.'"

Except for the allegations of Starflight, there is no evidence in the record of a request for emergency air service. On the other hand, the contract of carriage, supported by the statement of the transportation officer in the record, clearly establishes that the Army desired and requested deferred air service which is totally inconsistent with a request for emergency air service.

Consequently, Starflight is not entitled to charges for emergency air service, even though such service may have been performed.

Starflight tender No. 11, providing for deferred air service also provided in Note 7b that the tender does not apply to palletized shipments. The GBL shows on its face that deferred air service was requested but that the lading was palletized. Therefore, the GBL bore conflicting provisions on its face, which could not be performed. That is, either the service requested could not be performed, or the shipment could not be accepted in the shipping form tendered.

A bill of lading is a document of the carrier which is responsible for proper preparation of the bill of lading. 14 C.J.S., Carriers § 126. Cf. Antillean Marine Shipping Corporation v. La Universal, de Seguros, C. Por A., 359 So.2d 516 (1978), in which the Florida District Court of Appeals for the Third District held that ambiguities in a bill of lading are construed against the carrier. It has been held, in cases involving carriers subject to the Interstate Commerce Act, that the carrier has an obligation to request of the shipper clarification of ambiguous instructions on the bill of lading or be liable for any damages. Johnson Machine Works, Inc. v. Chicago, B.&O. R., 297 F.2d 793, 798 (1962); Hygrade Food Products Corp. v. Baltimore & O. R., 292 I.C.C. 638, 640-641 (1954).

Since the Army clearly requested deferred air service, but tendered the shipment in a form on which deferred service was not applicable, Starflight should have notified

the Army of the conflict. Since Starflight failed to do so, Starflight is obligated to honor the charges for deferred air service.

Therefore, we sustain the original audit action by GSA.

*for Milton J. Fowler*  
Comptroller General  
of the United States